IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of case

W.P. No. 2449 (M/S) 2001, decided on 29/9/2003

Bahar Ahmad Vs. Addl. District & Sessions Judge V Fast Track Court Dehradun & another

A.F.R. (Approved for reporting)
~~Not approved for reporting~~

Date 29/9/03

Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.2449 (MS) of 2001

Bahar Ahmad,
S/o Late Shri Abdul
Lateef, through Best
Tailors, 87 Goshi Gali, …… Petitioner

Versus

(1) Additional District
& Session Judge V Fast
Track Court Dehradun.
(2) Atmaram Gambheer,
S/o late Luxmi Chand
Ghambheer, Goshi Gali,
Dehradun. ……. Respondents

Dated: 29.09.2003

Hon'ble Rajesh Tandon J.

The present writ petition has been filed by the petitioner challenging the order passed by the appellate authority dated 21st July,2001 by which the appeal was allowed and the order passed by the Prescribed Authority rejecting the release application has been quashed.

Brief facts giving rise to the present writ petition are that an application under section 21(1) (a) of U.P. Act No. 13 of 1972 was filed in respect of the property situate at 87 Goshi Gali, Dehradun of which the petitioner is a tenant at the rate of Rs. 275/- per month.

The Prescribed Authority has rejected the release application filed by the landlord. It was observed by the Prescribed authority that

there is no bona-fide need to the landlord as there are alternative accommodation available with the landlord like godown, etc. The question of comparative hardship was also decided against the petitioner. Aggrieved by the order passed by the prescribed authority the landlord went in appeal. The appellate court has allowed the appeal and released the accommodation in favour of the landlord-respondent. The present writ petition has been filed against the aforesaid order passed by the appellate authority.

I have heard the learned counsel for the petitioner Sri.A.K. Sharma and Sri.S.K. Jain counsel for the landlord at great length.

Findings an bonafide need.

As will appear from the application under section 21(1)(a) of U.P. Act No. 13 of 1972 which has been filed an Annexure II to the counter affidavit, the landlord has stated that he was retired in 1991 from the Government service and, as such, he requires some business space in order to occupy himself. According to him he has started the business of share work and the companies have also appointed him as a dealer of I.S.D., S.T.D., P.C.O. machine and monitor Atlanta 2000 and for that purpose he requires some space to exhibit those machines.

In paragraph 5 of the application it was stated that there is a passage of 4' near his 'Baithak' and by keeping a small chair and table he has to satisfy himself for his livelihood. Paragraph 5 of the application is quoted below:-

प्रार्थी स्वंय शिक्षित तजुर्बेकार लगभग बेरोजगार व्यक्ति है । प्रार्थी की पत्नी स्नातक है। यह भी प्रार्थी के व्यापार में हाथ बटाने के लिये तैयार है व बंटा सकती है। प्रार्थी भी वैसे इस समय 57 वर्ष की आयु में अकेला दुकान चलाने में असमर्थ है तथा उसे सहयोगी की आवश्यकता है जैसा कि उपर निवेदन किया गया है। प्रार्थी तथा उसका परिवार प्रथम तल में निवास करता है। उनके लिये नीचे

दुकान अति सूक्ष्म है, वे उक्त दुकान को भली प्रकार चला सकते हैं अन्य स्थान पर नही चला सकते ।

The shop in possession of the petitioner is 8' X 10' and by getting release of the said shop he will be able to increase the area of the disputed shop by taking 4' the passage and, as such, the shop will come to the size of the 12' and for that purpose he will be able to satisfy his requirement of show room, show case etc. . The 'Baithak' behind the show room will also serve the purpose of residential requirement. Thus, 'Baithak' shall be used in the same form as a part of residential house.

The petitioner has filed a written statement and has denied the requirement of the landlord and has stated that the shop belonging to his brother is available to the landlord. He has also stated that his brother is 'Sanyansi'. The petitioner has stated that in a shop of 8' X 10' it is not possible to use the same as a show room.

The landlord has also filed a rejoinder affidavit wherein he has reiterated and has stated that the shop is required by him for his livelihood. So far as the shop owned by his brother Ratan Chandra Gambheer, he has no concern, and further he is not a 'Sanyasi' as well.

Admittedly the landlord has got residential accommodation on the first floor and on the ground floor there is a 'Baithak' of 9.5' X 12.5' and the said 'Baithak' being part of the residential house the landlord has left with a passage of 4' along which is also for ingress and egress for the 'Baithak' itself.

Atma Ram Gambheer has filed the affidavit dated 31.5.2000 reiterating the facts of his retirement as well as for opening the show room and denying the fact that Ratan Chandra Gambheer has become

'Sanyasi'. Apart from that another affidavit dated 14.6.2001 was filed by the landlord showing the documents that he has been appointed as agent of U.T.I., the working report, agency of the share brokership and the papers of Sri V.K. Sharma Company appointing the petitioner as sub-broker. Further the papers regarding the brokership from Birla Finance Globles Ltd., statement of work etc were filed by the landlord. All these papers form part of the affidavit of the landlord which shows that the respondent-landlord requires the premises for opening the show room for his livelihood. In fact the requirement as shown by the landlord is not only a mere desire to start the work but from the papers on the record it is fully proved that in a small passage of 4' he has already started various agencies work and, therefore, the need of the landlord cannot be termed as a mere 'desire' or 'wish' to start the business.

Annexure VIII of the counter affidavit is an affidavit of Sri Mathura showing that the brother of the landlord Sri Ratan Chandra Gambheer is not a 'Sanyasi' and out of the three shops of Ratan Chandra Gambheer he himself is occupying one shop, other shop is in the tenancy of 'Bhatt Opticals' and third is in the tenancy of Sri Kuldeep Singh. The relevant paragraphs are quoted below:

श्री आत्माराम गंभीर के पास विवादित दुकान के अतिरिक्त कोई अन्य दुकान नही है उसकी विवादित दुकान के लिये आवश्यकता सदभावी है तथा उनके पक्ष में नियुक्त किये जाने योग्य है।

प्रार्थी आत्माराम गंभीर बडी मुश्किल से अपनी बैठक में 4 फुट रास्ते में अपने व्यवसाय कर रहा है। उसके पास स्थान की भारी कमी है तथा उन्हें अतिरिक्त स्थान की सदभावी आवश्यकता है। आत्माराम गंभीर घोसी गली के प्रतिष्ठित व्यक्ति हैं उनका व्यवहार बहुत अच्छा है तथा उनका बहुत सम्मान है।

प्रार्थी का छोटा भाई रतनचंद गंभीर है, उन्होने कोई सन्यास नही लिया है तथा वह अपनी तीन दुकानो, जिसमें से एक रतन चंद गंभीर के पास स्वंय है तथाएक दुकान भटट ऑप्टीकर की किरायेदारी में व एक दुकान श्री कुलदीप सिंह को किरायेदारी में की बाबत व्यवहार करता है, किराया वसूल करता है।

The argument of the Counsel for the petitioner, therefore, that the shop of the brother is available to the landlord is falsified from the aforesaid affidavit. The petitioner could not contradict the aforesaid statements. It has been stated by the petitioner in his pleadings that there is a godown 13' X 9.5' which has been denied in the affidavit of Atma Ram Gambheer dated 1.6.2001 forming part of counter affidavit in which it was specifically denied that any godown is available with the landlord. Paragraph 7 and 13 of the Counter affidavit are reproduce as under:

"That the contents of Paragraphs 5 it is admitted that 4 'wide passage is available to the landlord for his business which is neither a proper place nor a suitable place for the business. No shop is available to the landlord. It is admitted that the shops alleged in paragraph 5 of this Writ Petition belong to Sri Ratan Chand Gambheer, brother of the deponent which is occupied by his tenents. It is false to say that his brother Sri Ratan Chand Gambheer is "Sanyasi".

" That the contents of Paragraph No. 11 of the Writ Petition are false the shop as well as the Godown alleged in this paragraph are owned to Sri Ratan Chand Gambheer brother of the landlord the landlord has no concern with the above shop, Godown. Bhatt Opticals is a tenant of Sri Ratan Chand Gambheer . Ram Singh filed a Misc.case No. 86 of 1993 against Ratan Chand Gambheer to deposit the rent of the Godown in Court which was allow on 12.5.95 from the

Court of Civil Judge (Junior Division) Dehradun. A true typed copy of the application to deposit the rent and order dated 12.5.95 is hereby Annexure by 1 and 2 of this Affidavit."

The available accommodation with the landlord, therefore, is only 4'passage and no godown is available. So far as the accommodation of his brother is concerned the landlord has no concern with the same. It has already been found that the brother is not a 'Sanyansi' and the shops are occupying him and two other tenants.

The map on the record also shows, i.e Annexure V to the writ petition that except 4' passage no other shop is available with the landlord.

The prescribed authority, therefore, was not correct while coming to the conclusion that the need of the landlord is not bonafide. Further there is nothing on the record to prove that the brother of the landlord is 'Sanyasi'. Moreover there is no legal right available to the landlord to occupy the shop of his brother.

However, no documents or any other material has been filed by the petitioner in order to prove that the brother is a 'Sanyansi'. Moreover, any property belonging to the brother cannot be clubbed with the respondent/landlord and the need of the respondent-landlord has to be decided on his own legs. The appellate authority, therefore, has rightly come to the conclusion that the need of the landlord is genuine as he is having only 4' wide passage where he is running by the entire business. The findings of the appellate authority are quoted below:

"Admittedly, the appellant landlord is a retired official getting monthly pension as aforesaid. The evidence available on record reflects that the appellant was appointed as dealer on behalf of Atlanta System for Atlanta etc. P.C.O. and Monitor machine.

Documentary evidence appended to the appellant/ applicant's affidavit (paper no. 23-A) also reflect that he was also appointed by the Unit Trust of India as the approved agent of the Trust for the year, 1992. He was also appointed as Sub-Broker for dealing in share. He was also appointed as Broker to Fixed Deposits Scheme launched by Birla Global Financing Ltd., Aditya Birla Global Co. Ltd."

"The evidence also shows that 4' wide passage is available to the appellant for the said business. Two shops, one in the possession of Bhatt Opticals and the other in the ownership of appellant's brother, are said to be the accommodations available to the appellant. Admittedly, one shop is in the tenancy of Bhatt Opticals. *The godown and the other shop belong to Ratan Chand Gambheer. There is nothing on record to show that the Sanyansi brother of the appellant has transferred his property to the appellant. It is worth to observe that there is no law on the earth that a Sanyasi can not hold or own the property."*

In the light of the aforesaid facts and circumstances the need of the landlord for his livelihood being genuine and bonafide it can not be termed as a 'wish' or 'desire' alone. The appellate authority has rightly come to the conclusion that landlord requires the premises bonafide.

Findings on comparative hardship.

So far as the Comparative hardship is concerned the appellate Court has recorded the findings of fact that the landlord shall suffer greater hardship than the tenant as he has no place to run his business.. The landlord has got only a passage of 4' and at the cost of the landlord the petitioner is enjoying the premises.

The findings of the appellate authority on the comparative hardship of the landlord is quoted below:-

"In view of these circumstances, it is crystal clear that there remains 4' wide passage available to the appellant for running his business. The alleged theory of availability of other shop and godown is not proved on record. If the landlord is forced to carry on business in driving room (Baithak) or passage because of shortage of passage and he requires the accommodation for carrying on the business, it cannot be said that the need of such a landor is not genuine and moreover, the age of the landlord is virtually no bar for the release".

"Learned counsel for the appellant remarked during the course of arguments that no tenant can flourish at the costs of the landlord. There appears sufficient force in it. Citation Lakhraj Sindhi Vrs. Ram Lakhan Gupta and others 1998(2) A.R.C. 738 has also been referred. Landlord needs to augment his meager income from pension by setting up business is also bonafide and genuine ".

"There appears nothing on record to show that the tenant made any effort of finding out any other accommodation for himself inspite of the fact that about four years have passed since the filing of the release application"

"The elements of bonafide need and comparative hardship - both are lying in favour of the landlord".

Relevant case law regarding non -residential requirement of the landlord.

In Smt. Prativa Devi Vs. T.V. Krishnan, 1987 S.C.F.B it has been held by the Apex Court that since the landlord has no legal right to occupy any of the shops, the findings of the appellate Court therefore cannot be interfered. The findings of the Apex Court are given below:

"In considering the availability of alternative accommodation, the Court has to consider not merely whether such

accommodation is available but also whether the landlord has a legal right to such accommodation. The appellant had established her bonafide personal requirement of the demised premises under Section 14(1) (e) of the Act and her claim could not be disallowed merely on the ground that she was staying as a guest with a family friend by force of circumstances."

The Apex Court in G.C Kapoor Vs Nand Kumar Bhasin 2001 (2) Allahabad Rent Cases page No. 603 has relied upon the judgment of Datta Laxman as well as Raghunath Pale and has come to the conclusion as under:

"It is settled position of law that bona fide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattaraya Laxman Kamble V. Abdul Rasul Moulali Kotkunde and Another, 1999 (4) SCC 1: 1999 SCFBRC 292, this Court while considering the bona fide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bona fide'. It was also held that while deciding this question, Court would look into the broad aspects and if the Court feels any doubt about bona fide requirement, it is for the landlord to clear such doubt".

"In Raghunath G. Panhale (D) by Lrs. V. Changanlal Sundarji and Co. 1999 (8) SCC 1: 1999 SCFBRC 440, this Court inter alia held that it was not necessary for landlord to prove that he had money to invest in the new business contemplated nor that he had experience of it. It was a case for eviction on the ground of bona fide requirement of the landlord for non-residential purpose, as he wanted to start a grocery business in the suit premises to improve his livelihood".

It has been held in N.S Dutta V. VIIth Addl. District Judge, Allahabad of the following effect are quoted below:

"In deciding this aspect of the matter, held the Supreme Court in Mt. Bega Begum and others,(1979) 1 SCC 273 (supra), "each party has to prove its relative advantages or disadvantages and the entire on us cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the dependents and that they were remediable."

"In M/s Central Tobacco Co. V. Chandra Prakash an unreported decision of the Supreme Court of 1969, which has been followed in Bega Begum (supra) and again in Phiroze Bamanji Desai V. Chandrakant N. Patel,(1974) 1SCC 661 it was held that each party must adduce evidence to show that hardship could be caused to him by the granting or refusal of the decree and that the tenant must also adduce evidence to the effect that other reasonable accommodation was not available to him. The view taken in Bega Begum (supra) has been followed in Kewal Singh V. Lajwanti, (1980) 1SCC 290. The Court is entitled also to take into account the fact that the tenant has neither alleged, nor proved to have made effort to have an alternative accommodation. Nur Ilahi IIIrd Addl. District Judge, Saharanpur and others, 1983 (1) ARC 412; Sanwal Das Binka, 1982(1) ARC 24 (supra). Moreover, the non-availability of alternative accommodation to the tenant is in itself not the adequate ground to reject the landlord's application vide Kamil Khan V. IIIrd Addl. District Judge, Bareilly and others, 1982 (1) ARC 783. In Suraj Prasad Sharma V. II nd Additional District Judge, Mirzapur and others, (1983) Alld. C.J. 432: 1983 (1) ARC 427, brother M.N Shukla, J. observed:-

"It is a common place fact that invariably whan an application under Section 21 of the Act is allowed, the tenant has to quite and this

involves discomfort but if this alone were sufficient to non-suit the landlord, no application for release could ever be allwed. Judging comparative hardship's is a matter of deeper import and it would be a lopsided order which dismisses a landlord's application for release merely with the plaintiffs dinous observation that the tenant would be "thrown on the street". The physical dispossession of the tenant is the necessary concomitment of every release application of the landlord which is allowed. However, well-founded the application may be an element of inconvenience or discomfort is inherent in the very process of vacating an accommodation. A release application cannot be thrown out merely with the bald observation that the tenant would suffer greater hardship."

"In Radhey Shyam V. IV th Additional District Judge Bulandshahr and other, 1980 ARC 594 (supra) the appellate court held that the landlord should himself take one of the shops pointed out by him on rent as the landlord's son had to start a business so that he could make the beginning anywhere without any prejudice, the tenants had a goodwill in respect of the shop in dispute having been carrying on business therein for nearly forty years. Learned single Judge considered as weighing the scales for too much against a landlords and it was observed that "if the view taken by the District Judge is accepted, the landlord intending to start a business can never expect to get his shop. For his claim could always be defeated by a sitting tenant on the short ground that the landlord has to make a start while the tenant has already been in the business for a longer time."

"Having regard to the discussion made above, the application under Section 21(1) (a) was rightly allowed since the respondent no. 3 bonafide requires the building and the balance of comparative hardship was not found to lie in the petitioner's favour. The writ

petition, therefore fails and is dismissed with costs. The petitioners shall have six month's time to vacate"

In Muni Lal and others V. Prescribed Authority and others, AIR 1978 Supreme Court 29, the Apex Court has held as under:

"P.N. Bhagwati,J. :- The only ground on which the decision of the High Court is challenged in this appeal is that the High Court has not examined the question of comparative hardship of the landlord and the tenant in rejecting the writ petition of the appellant, we find that the prescribed authority did consider the comparative hardship of the landlord and the tenant in the light of the evidence before it and came to the conclusion that the need of the landlord was greater than that of the tenant. The District Judge also affirmed this view in appeal and when the matter came to the High Court by way of writ petition, the High Court also pointed out in its judgment that "on perusal the appellate court found that the need of the respondent No.3 was greater than that of the petitioners. This is also a finding of fact and it is not possible to disturb the same in these proceedings." There can be no doubt that a finding that the need of respondent No.3, landlord was greater than that of the appellant/tenant is a finding of fact and when the High Court has refused to interfere with this finding of fact, we cannot find fault with the High Court, even if the findings were wrong on the evidence before the Court. It is not for the High Court in the exercise of its jurisdiction under Act. 226 of the Constitution to reappraise the evidence and come to its own conclusion which may be different from that reached by the District Judge or the Prescribed Authority. We do not therefore, see any reason to interfere with the decision of the High Court."

In M/s India Pipe fitting Co. Vs Fakruddin M.A Baker, AIR 1978 S.C Supreme Court page No. 45 it has been held that no interference can be called under Article 226/227 of the Constitution of

India and the High Court cannot reappraise the evidence in order to come to a different conclusion. The observations of the Apex Court is under:

" There can be no doubt that a finding that the need of respondent No.3 landlord was greater than that of the appellant/tenant is a finding of fact and when the High Court has refused to interfere with this finding of fact, we cannot find fault with the High Court, even if the findings were wrong on the evidence before the Court. It is not for the High Court in the exercise of its jurisdiction under Act. 226 of the Constitution to reappraise the evidence and come to its own conclusion which may be different from that reached by the District Judge or the Prescribed Authority . We do not, therefore, see any reason to interfere with the decision of the High Court."

Further in Ragavendra Kumar Vs Firm Prem Machinery and Co. (2000) 1Supreme Court Cases 67 it has been held by the Apex Court as under:-

"It is true that the plaintiff landlord in his evidence stated that there were a number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that the suit premises is suitable for his business purpose. It is a settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. (See Prativa Devi V.T.V. Krishnan.) in the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted."

"Mr. Satish Chandra, learned Senior Counsel while drawing our attention to the judgment of the learned Single Judge has urged that the plaintiff landlord and his late father had a number of shops,

house including the disputed shop but we find that there is nothing on record to show that any of such shop premises was vacant and suitable for the purpose of the proposed business."

In Ram Shankar Dixit Vs. Vijay Bahadur Singh and other, 2002 (46) A L R 390 it has been held by the Apex Court that High Court in exercise of his jurisdiction will not interfere unless the tribunal has entertained any inadmissible evidence. The findings of the Apex Court are quoted below:-

"It is will settled that a finding of an inferior tribunal can be interfered by the High Court in exercise of its jurisdiction only when the High Court come to the conclusion that the tribunal has entertained any inadmissible evidence or that it has ignored to consider any vital piece of evidence or that the finding is based on no evidence at all. From the judgment of the High Court we do not find that the High Court has at all discussed the finding of the Appellate Authority on the dilapidated condition of the building."

Relying upon the judgment in Suraj Prasad Sharma V. II nd Additional District Judge, Mirzapur and others, 1983 (1) ARC 427 in Smt. Nirmala Tandon and Xth Additional District Judge, Kanpur Nagar 1996(2). It has been held that whenever tenants is evicted it involves discomfort unit that constitute a ground for rejecting the release application. The observations are quoted below:-

"If on consideration of comparative hardship it is found by the concerned authority that the comparative hardship of the landlord would be more if the application for release were to be rejected as compared to the hardship of the tenant if the application is granted, the release of the accommodation sought for cannot be validly refused. In Suraj Prasad Sharma V. II nd Additional District Judge, Mirzapur and others, 1983 (1) ARC 427, this Court has held as under:-

"It is common place fact that invariable when an application under Section 21 of Act is allowed, the tenant has to quit and this involves discomfort but if this alone was not sufficient to non-suit the landlord, no application for release could ever be allowed. Judging, comparative hardships is a matter of deeper import and it would be elopsided order which dismisses a landlord's application for release merely with the plaitntitudinous observation that the tenant would be "thrown on the street". The physical dispossession of tenant is the necessary concomitant of every release application of the landlord which is allowed . Howsoever, well found that the application may be, and element of inconvenience or discomfort is inherent in the very process of vacating an accommodation."

Clause (b) sub rule (2) of Rule 16 of Act No. 13 of 1972 has been interpreted by the Allahabad High Court in Bharat Kumar Gupta and others Vs VIIth Additional District and Sessions Judge.Aligarh and others 1997(2) on page No. 259, by observing that the *'tenant has available with him suitable accommodation to which he can shift his business'*, the expression "available with him" has been interpreted as under:

"The expression "available with him" in this sub-rule dies not necessarily mean actual physical availability. A suitable alternative accommodation which may become available on an effort being made in that direction is also in the compoehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earenest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretches. Rajendra Kumar Gupta V. Gupta Krishan and others. AIR 1995 Alld. 82 1994 (2) ARC 11. It has been held by Sudhir Narain, J. and I concur with the view taken therein in that "one of the principles

for considering comparative hardships of the parties is to find out as to whether the tenant had made a sincere effort to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort."

"In PIPER V. HARVEY (1958) 1 All. E.R. it has been held that the decision on greater hardship is not liable to be inteferred with . The observations of the Court in the aforesaid court are quoted below:-

"I have in mind what this court has said in coplans V King (1) (1947 . A111 E.R. 393) to the effect that the decision of the country court judge, when considering the balance of hardship, is to all intents and purposes final. It is not for the Court of Appeal to interfere when there is evidence on which the judge can reasonable come to the conclusion which he did.

Conclusions

The landlord has established his bonafide requirement. Comparative hardship also lies in his favour as he is a retired person and he wants to carry on his livelihood. He is carrying on business in a 4' space. The writ jurisdiction under Article 226 of the Constitution of India cannot be invoked to save a tenant who has not made any efforts to search out any other accommodation during the pendency of the present proceedings. (The appellate Court has considered the entire evidence available on the record). While recording the findings of bonafide need and compatiative hardship in favour of the landlord.

In view of the aforesaid facts and circumstances the requirement of the landlord for release of the accommodation has been found to be bonafide by the appellate authority, it requires no interference under Article 226 of the Constitution of India. The landlord has proved bonafide need and comparative hardship in his

favour. Both the findings therefore are findings of fact cannot be interfered in the writ jurisdiction. Under Article 226/227 of the Constitution of India.

Consequently, no infirmity has been made out in the order passed by the appellate authority. The petitioner therefore is granted 8 months time to vacate the premises provided he gives an undertaking to vacate the premises. The petitioner shall file an undertaking before the prescribed authority Dehradun. Within a period of two weeks from today.

Consequently, the writ petition fails and is dismissed. However there will be no order as to costs.

Dated:29.09.2003

(Rajesh Tandon, J.)